

REMARKS

This Response is to the Final Office Action dated July 29, 2008 and is submitted in conjunction with the attached Request for Continued Examination. Claims 1, 4, 15 and 25 and small portions of the specification have been amended herein. No new matter has been added by any of these amendments. Applicants submit that all of the amendments made to the claims herein were to further clarify the invention and expedite prosecution, not to overcome any of the references cited in the Office Action. Claims 2 and 29 have been cancelled without prejudice or disclaimer. Please charge Deposit Account No. 02-1818 for the Request for Continued Examination and any other amounts due.

In the Office Action: (a) the drawings were objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they include certain reference characters [Fig. 11, 1008(a, c-e) and 520(a-e)] allegedly not included in the written description; (b) Claims 1 to 6, 8 to 17, 20 to 22, 24, 25, 28 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over International Publication No. WO 99/42933 to Bar-Gadda ("*Bar-Gadda*") in view of U.S. Publication No. 2002/0169636 to Eggers et al. ("*Eggers*") and further in view of U.S. Publication No. 2001/0044588 to Mault ("*Mault*"); (c) Claims 7, 18, 26 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers* and *Mault* and further in view of United States Patent No. 6,057,758 to Dempsey et al. ("*Dempsey*"); (d) Claim 19 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers* and *Mault* and further in view of www.catharsismedical.com; and (e) Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers* and *Mault* and further in view of Paula ("*MEMS Sensors Branch Out*". Mechanical Engineering. New Your: Oct 1996. Vol. 118, lss. 10; pg 64) (hereinafter "*Paula*").

Regarding the objection to Fig. 11, Applicants have amended the specification to remedy this deficiency and respectfully request that the objection be withdrawn.

Regarding the rejection of Claims 1 to 6, 8 to 17, 20 to 22, 24, 25, 28 and 29 under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers* and *Mault*, Applicants respectfully submit that this rejection is overcome for at least the reasons set forth below. Applicants have addressed the rejection of certain dependent claims, however, make no admission of the merits of the rejection of any dependent claim not addressed.

Claim 1 as presently presented includes operating a timer to determine if a response to a notification condition is received during a predefined timer limit and *if* the response to the notification condition is not received prior to the predefined timer limit, transmitting the signal relating to the notification condition to a second clinician's device.

Page 3 of the Office Action states that *Mault* discloses operating a timer. *Mault* is drawn to a monitoring system for allowing a person to remotely monitor a physiological parameter of a subject. (See Abstract). Paragraph [0008] of *Mault*, referenced in the Office Action, discloses sending body temperature readings remotely either continuously or at "regular intervals based on a clock contained in the [transducer]." *Mault* does not disclose operating a timer to determine if a *response* to the notification condition is received during *a predefined timer limit*. *Mault* instead discloses sending a signal including a body temperature reading at a certain interval, which is different than starting a timer set at a predefined timer limit *after* a reading is sent.

Regarding Claim 2 (now incorporated into Claim 1), Pages 3 and 4 of the Office Action admit that *Bar-Gadda* does not explicitly disclose transmitting a signal to a second clinician's device if a response to a notification condition is not received prior to a predefined timer limit, but that:

[I]f a notification is sent to a first clinician's device, it is obvious it can be sent to a second clinician's device. Therefore, it would have been obvious to . . . transmit a signal to a second clinician's device if a response to the notification condition is not received prior to a predefined timer limit because the step of transmitting a signal to a second clinician's device does not patentably distinguish the claimed invention.

First, as discussed above, *Mault* does not disclose operating a timer to determine if a response to a notification condition is received during a predefined timer limit. Further, the cited passage of *Bar-Gadda* discloses sending a message to a physician a predetermined amount of time before a surgery (e.g., sending a surgeon MRI results two hours before a surgery), making no reference to a message being sent *if* a response to a message is not received. Accordingly, neither *Mault* nor *Bar-Gadda* disclose the claimed timer operation.

Further, sending a signal to one clinician's device does not render obvious sending a signal to a *second* clinician's device *if* a response to a notification condition is not received prior to a predefined timer limit. One of the benefits of the claimed method is not having to burden multiple clinician's with notifications, but still ensuring notifications are received and addressed

by sending a signal relating to a notification condition to a second clinician *if* a response to the notification condition is not received prior to the predefined timer limit. If the *Bar-Gadda* system sent a message to multiple clinician's, all clinician's would receive a message at the same time, eliminating the benefit of the claimed system. Further, the combination of the cited clock in *Mault* and a system which sends a message to multiple clinicians is a system which sends a message to multiple clinicians at regular intervals (the extent of the disclosure of *Mault*), not *if* a response to the message is not received prior to a predefined timer limit.

Regarding Claim 11, the Office Action states that *Bar-Gadda* discloses a request generated by a remote device and received by a first central computer and a response message generated by the first central computer. Page 5, line 34 to page 6, line 7 of *Bar-Gadda*, referenced by the Office Action, discloses a recipient of a message being able to make comments on an initiator's message (or email) and forward the initial message along with the comments back to the initiator or to other relevant parties. *Bar-Gadda* does not disclose **a request generated by a remote device**. In the above passage of *Bar-Gadda* a message is sent and ultimately commented on, not requested by a remote device.

The Office Action further states that paragraph [0012] of *Mault* discloses a response message sent by a first central computer **including information contained within a data packet generated by a medical treatment device**. This portion of *Mault* discloses body temperature readings being sent to a remote site, such as a web-server, and later being accessible by a physician or sent to a physician. Above, the Office Action refers to a message recipient's computer as a "first central computer" in *Bar-Gadda*. In *Mault*, body temperature readings are automatically sent from a web-server, not a recipient's computer. One of ordinary skill in the art would not have been motivated to combine *Bar-Gadda* and *Mault* because the cited portion of *Bar-Gadda* does not require the accessing of any information, but rather, enables a user to comment on a received message.

Dependent Claim 12 includes a second computer attached, via a communication link, to the first central computer at least partially located within a health care facility, wherein the request generated by the remote device is received by the first central computer and the second central computer, wherein a response message is generated by the second central computer in response to the request generated by the remote device, and wherein the response message

generated by the first central computer comprises the response message provided by the second central computer and additional data added by the first central computer.

The Office Action cites page 4, lines 2 to 7 of *Bar-Gadda* for its disclosure of a web server computer and an application server computer, and states these computers correlate to a first and second computer. However, in Claim 11, from which Claim 12 depends, the Office Action reasons that a receiving physician's computer is a first central computer, referring to page 5, line 34 to page 6, line 2 of *Bar-Gadda*. The Office Action thus refers to two different computers as being a first central computer. Further, the Office Action does not address where *Bar-Gadda* discloses ***a response message generated by the second central computer*** in response to the request generated by the remote device, and ***the response message generated by the first central computer comprising the response message provided by the second central computer and additional data added by the first central computer.***

Regarding Claim 15, Applicants have amended the claim to clarify that the information contained within the data packet includes at least one of status information and programming information ***for the medical treatment device***. Paragraph [0012] of *Mault* discloses sending patient body temperature readings to a physician, not sending information regarding a medical treatment device. Also, regarding dependent Claim 29 (now incorporated into Claim 15), the Office Action referred to paragraph [0055] of *Mault*, which discloses providing reminders to physicians specific to monitored patient parameters. This passage of *Mault* clearly also does not disclose a data packet including at least one of status information and programming information ***for a medical treatment device***.

For at least these reasons, Applicants respectfully submit that Claims 1, 3 to 6, 8 to 17, 20 to 22, 24, 25 and 28 are patentable over the combination of *Bar-Gadda*, *Eggers* and *Mault* and in condition for allowance.

Regarding the rejection of Claims 7, 18, 26 and 30 under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers*, *Mault* and *Dempsey*; Claim 19 under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers*, *Mault* and www.catharsismedical.com; and Claim 23 under 35 U.S.C. §103(a) as being unpatentable over *Bar-Gadda*, *Eggers*, *Mault* and *Paula*, Applicants respectfully submit that these dependent claims are patentable for the same reasons as respective independent Claims 1, 11 and 15.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Matthew S. Dicke
Reg. No. 58,819
Tel. (312) 578-5415
Customer No. 29200

Dated: October 27, 2008